

REMARKS

Claims 22, 25-27 and 29-39 were previously pending in the application. By the Amendment, Claims 22, 25-27, 29, 30, 32-35 and 37-39 are currently amended. Claims 31 and 36 remain unchanged. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

In the Office Action, claim 38 is rejected under 35 U.S.C. §112, first paragraph. Claim 39 is rejected under 35 U.S.C. §112, second paragraph. Additionally, the claims stand rejected under the cited prior art of record. Specifically, claims 22, 25, 29, 30 and 37-39 were rejected under 35 U.S.C. §103(a) over German Patent Publication DE 196 22 882 (DE '882) in view of German Patent Publication DE 196 47 567 (DE '567). Claims 26 and 27 were rejected under 35 U.S.C. §103(a) as being unpatentable over DE '882 in view of DE '567 and Bovenkerk (U.S. Patent No. 3,167,159). Claim 31 was rejected under 35 U.S.C. §103(a) as being unpatentable over DE '882 in view of DE '567 and Lampman et al. (U.S. Patent No. 4,746,177). Claims 32-35 were rejected under 35 U.S.C. §103(a) as being unpatentable over DE '882 in view of DE '567 and Japanese Patent Publication 2002-336180 (JP '180). Claim 36 was rejected under 35 U.S.C. §103(a) as being unpatentable over DE '882 in view of DE '567, JP '180 and Milocco (U.S. Patent No. 5,273,061).

35 U.S.C. §112, First Paragraph

The Office Action contends that the recitation in claim 38 that "the closed capsule is within the given portion of the variable heat damping layer" is not mentioned in the specification. Without conceding this rejection, this language has been deleted from claim 38.

Applicant notes that corresponding subject matter has been added in claim 37, reciting that the heat damping layer contains the closed capsule containing hydrogen Support for this subject matter can be found in the specification at, for example, page 3, lines 28-31, page 4, lines 9-16, and page 9, lines 4-18. Withdrawal of the rejection is requested.

35 U.S.C. §112, Second Paragraph

Claim 39 was rejected under 35 U.S.C. §112, second paragraph, for lacking antecedent basis for the “given portion of the variable heat damping layer.” Claim 39 has been amended to depend from claim 38. Withdrawal of the rejection is requested.

Rejections Over Prior Art

The present invention is directed to a dishwasher and a method of operating a dishwasher. As representatively set forth in claim 37, the present invention provides a dishwasher including a washing container and a variable heat damping layer. The washing container has a plurality of walls forming a volume in which items to be washed are retained. The variable heat damping layer at least partially surrounds the washing container and has a variable thermal conductivity in that the heat damping layer can be adjusted between at least a first thermal conductivity value at which thermal conductivity through the heat damping proceeds at a first rate and a second thermal conductivity value at which thermal conductivity through the heat damping proceeds at a second rate different than the first rate. Moreover, as set forth in independent claim 37, the heat damping layer contains a closed capsule containing hydrogen in which at least one metal hydride grid is arranged, which can form a chemical compound with the hydrogen and thus bind the hydrogen, and the capsule has a selected one of a pressed glass and a non-pressed glass fibre core that is surrounded by a gastight jacket made of a selected one of a stainless steel sheet and a non-stainless steel sheet. According to claim 37, the heat damping layer is configured such that heating of the capsule has the effect that the hydrogen previously bound in the metal hydride grid is released, the pressure in the capsule increases, and the thermal conductivity of at least one of the capsule and the entire heat damping layer is increased and the heat damping layer is configured such that cooling of the capsule has the effect that the free hydrogen is resorbed with the metal hydride grid in a chemical compound, the pressure in

the capsule drops, and the thermal conductivity of at least one of the capsule and the entire heat damping layer is decreased. The heat damping layer is in heat-conducting contact with one of walls of the washing container and with an outer wall of the dishwasher.

The Office Action recognizes that DE '882 lacks a heat damping layer including a closed capsule containing hydrogen in which at least one metal hydride grid is arranged The Office Action contends, however, that DE '567 discloses this subject matter. The Office Action concludes that it would have been obvious to modify DE '882 "to utilize a heat damping layer as mentioned in DE '567 instead of the heat damping layer of DE '882 to have a vacuum insulation and enhance insulation efficiency." Applicant respectfully submits that the characterization of DE '567 is inaccurate.

DE '567 discloses a vacuum heat building insulation panel with variable heat conductivity. As described in the Abstract, the panel is based on a gastight, coarsely porous or coarsely structured insulating material that is cladded and evacuated. The panel includes an electrically heatable getter material inside its cladding. In order to function properly, as would be apparent to those of ordinary skill in the art, the getter is operable in a vacuum. The getter is suitable for DE '567 since the panel is gastight, cladded and evacuated. In this context, Applicant submits that the structure disclosed in DE '567 would not function properly in combination with the structure of DE '882. Moreover, replacing the entire heat damping layer in DE '882 would require substantial structural modifications that are neither suggested by either reference nor readily determinable by those of ordinary skill in the art. In fact, such a vacuum cladded panel is not suitable for an application to a dishwasher. Even under the Supreme Court's *KSR* decision, the combination of DE '882 and DE '567 could not possibly yield predictable results, particularly since the getter material of DE '567 could not function in combination with the DE '882 structure. As such, Applicant respectfully submits that the rejection is misplaced.

Moreover, claim 37 has been amended to recite that the heat damping layer contains the closed capsule containing hydrogen Support for this amendment is referenced above. As discussed previously, DE '882 describes that the intermediate reservoir 7 that receives and releases the heating medium is separated from the respective layer that overlies a wall of the dishwasher. The DE '882 structure would require substantial structural modifications to accommodate a heat damping layer containing the claimed closed capsule. DE '567 does not provide the necessary teaching to achieve such modification, and for this reason also, Applicant submits that the rejection of independent claim 37 is misplaced.

With regard to independent claim 32, claim 32 has been amended to include a step of the heat damping layer containing the capsule. Additionally, claim 32 recites that the heat damping layer is disposed at the relatively lower thermal conductivity value by cooling the capsule . . . and that the heat damping layer is disposed at the relatively higher thermal conductivity value by heating the capsule With reference to the discussion above concerning claim 37, Applicant submits that DE '882 and DE '567 similarly lack these features of the invention. DE '882 fails to disclose the claimed closed capsule contained in a heat damping layer, and DE '567 does not correct this deficiency. DE '567 also requires a vacuum for its getter to function properly. JP '180 is cited for the proposition of a dishwasher including steps of providing a control means to execute a program. As discussed previously, however, JP '180 is merely directed to an operating program for a dishwasher and provides no suggestion of a variable heat arrangement for influencing the condensation capabilities of a wall of the dishwasher. JP '180 thus also does not correct the deficiencies noted with regard to DE '882 and DE '567.

Applicant submits that the dependent claims are allowable for the same reasons and also because they recite additional patentable subject matter. The

additional secondary references do not overcome the deficiencies noted with regard to DE '882 and DE '567.

Reconsideration and withdrawal of the rejections are respectfully requested.

CONCLUSION

In view of the above, entry of the present Amendment and allowance of Claims 22, 25-27 and 29-39 are respectfully requested. If the Examiner has any questions regarding this amendment, the Examiner is requested to contact the undersigned. If an extension of time for this paper is required, petition for extension is herewith made.

Respectfully submitted,

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